

**SEDGWICK COUNTY
BOARD OF ZONING APPEALS
MINUTES
April 4, 2006**

The Sedgwick County Board of Zoning Appeals meeting was held at 3:30 p.m. on Tuesday, April 4, 2006, in the Planning Department Conference Room, Tenth Floor of City Hall, 455 N Main, Wichita, Kansas.

The following members were in attendance:

GRANT TIDEMANN, DENNIS GRUENBACHER, TOM LINDSAY and KATHLEEN GIDEON.

The following members were absent:

JANA MULLEN

The following Planning Department staff members were in attendance: JESS MCNEELY, Secretary, DALE MILLER, Current Plans Manager, and YOLANDA ANDERSON, Recording Secretary.

Other members present:

GLENN WILTSE

Other members absent:

BOB PARNACOTT

TIDEMANN Calls meeting to order at 3:30pm.

TIDEMANN Requests that the minutes of July 5, 2005 be approved.

LINDSAY Moves to approved minutes

GIDEON Seconded

TIDEMANN Those in favor say aye.

Motion Carried 3-0

TIDEMANN Agenda Item 3 COBZA2006-00010 a Sedgwick County variance request to reduce setback along a major roadway from 85 feet to 79 feet.

MILLER This is an interesting case. What we have is a building that has been constructed in the 85-foot setback. In the Zoning Code, there is a blanket-building setback for section line roads that states that buildings are to be set back 85 feet from the section line road. What we have in this situation is a building that was constructed about 79 feet 8 inches from the section line road. There is a little over a 5 foot encroachment into the setback.

BACKGROUND: Article III-Sec. III-E.e. (3) of the *Unified Zoning Code* establishes an 85-foot building setback from all section line roads located in the unincorporated area of Sedgwick County, irrespective of the minimum setbacks established by individual zoning districts. The applicant proposes to reduce the required 85-foot setback from a section line road to 79 feet 8 inches feet order to remove any front setback nonconformity associated with an existing pole barn located north of 37th Street North and ¾ mile west of 247th Street West. A pole barn has been constructed within the 85-foot setback, encroaching 5 feet 4 inches, resulting in a setback of 79 feet 8 inches.

According to the applicant (see attached written justification), prior to construction, he contacted Sedgwick County staff that allegedly advised him the setback was only 65 feet, instead of 85 feet. The building that is the subject of this request was then sited so as to comply with the 65-foot setback back. County staff does not recall talking with the applicant prior to construction. The setback inaccuracy might have been caught if the applicant's contractor had applied for a building permit or had called for building inspections, but he did not. So the building was completed with the setback encroachment.

Solutions available to the applicant include this variance or removal of the encroaching portion of the building. At this point, the applicant has chosen to apply for the variance rather than removing a portion of the building. The applicant's justification letter indicates that the building is constructed in such a fashion that removal of a portion of the building is not possible without having to rebuild the entire building.

The application site is 40 acres of farm ground located in an area where agricultural activities are the dominant land use. No other buildings exist on the application area. Surrounding ownerships are in large tracts, and virtually all of the homes in the vicinity are farmsteads. The site is not located within any city's anticipated urban service area, or within any city's projected growth area. The property is zoned RR Rural Residential and would have a 20-foot front setback, absent the 85-foot section line road rule.

37th Street at this point has a 30-foot half-street right-of-way. There are not any improvements scheduled for 37th Street by the *Sedgwick County Capital Improvement Program 2006-2010*. The *Functional Classification Map* depicts this segment of 37th Street as a minor rural collector. *Sedgwick County Subdivision Regulations* require a 60-foot half-street right-of-way. The proposed setback would accommodate that standard.

ADJACENT ZONING AND LAND USE:

NORTH	"RR" Rural Residential; Farm ground owned by the applicant
SOUTH	"RR" Rural Residential; Farm ground
EAST	"RR" Rural Residential; Farm ground owned by the applicant
WEST	"RR" Rural Residential; Farm ground

UNIQUENESS: It is the opinion of staff that this property is not unique inasmuch as the property is physically similar to property adjoining and abutting it in size, use and topography; however the situation is somewhat unique in that the property owner states that he attempted to determine the correct setback by calling staff but somehow ended up establishing the building in an improper location. County staff indicates they do not remember talking with the applicant. To compound the initial error, the applicant's contractor failed to obtain a building permit for the nonconforming building or to have it inspected. Because of the source of the initial error cannot be fully ascertained, it resulted in the construction of nonconforming improvements.

ADJACENT PROPERTY: It is the opinion of staff that the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as the adjacent properties are all very large tracts and used for agricultural purposes. It is unlikely the encroachment would even be noticed by any of the adjoining property owners.

HARDSHIP: It is the opinion of staff that the strict application of the provisions of the zoning regulations constitutes an unnecessary hardship upon the applicant, inasmuch as requiring the applicant to comply with the setback requirement will require the building to be dismantled and rebuilt.

PUBLIC INTEREST: It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as the county typically would only need 60-feet of half street right of way to accommodate a typical section line road. Approval of this request would leave nearly 80 feet of half-street right-of-way.

SPIRIT AND INTENT: It is the opinion of staff that the granting of the variance requested would not be opposed to the general spirit and intent of the zoning regulations, inasmuch as the primary intent of the setback requirements is to maintain sufficient separation between structures to maintain fire safety and to provide for the circulation of light, air and traffic, and the requested variance does not negatively impact this intent.

RECOMMENDATION: Should the Board determine that all five conditions necessary to the granting of the variance can be found to exist, then it is the recommendation of the Secretary that the variance to reduce the setback from 85 feet to 79 feet eight inches be GRANTED, subject to the following conditions:

1. The site shall be developed in substantial conformance with the approved site plan and elevation drawings.
2. The setback reduction shall apply only to the 81-foot length of the 81 by 41 pole barn as illustrated on the approved site plan. All other structures or additions on the subject property shall conform to the setbacks permitted by the Unified Zoning Code unless a separate Zoning Adjustment or Variance is granted.
3. The applicant shall obtain all permits and approvals necessary to construct the improvement as if the barn was not constructed.
4. The resolution authorizing this variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

Jim Weber with the County does not see anything wrong with the granting of the variance. The person who filed the application is not here. Are there any questions? Glen Wiltse with the Sedgwick County Code Enforcement is here if you wish to ask him any questions.

TIDEMANN One question I have is explained to me what happens in these situations where permits were not issued?

- WILTSE We got a call from the power company about electrical services for a building that was constructed without a permit. Staff went out and no permit. Originally when we first measured, we thought it was 3 feet into the setback. Then we had a County survey company go out and actually survey the distance to make sure of the distance that is how we ended up with 5 foot 4 inches. We have certain companies that own licenses that historically do not like pulling their own permits. They will put it in the contract that the property owner is responsible for getting the permit. Our first contact was with that company and they said no it is in the contract that it is up to the property owner to get the permit. There were discussions back and forth between them. They claimed that they had contacted us. The first we knew about it was when the power company called us. The 85 foot is the standard setback in a lot of our areas. I wanted to explain what happened. We do not have a problem with the setback but we have a problem with the way the building was constructed and we gave citations. We will still require engineering on the building because it was built without permits and inspections. We will still require that they get permit on the building. We did give citations to the contractor and we will have an engineering company to review the structure.
- TIDEMANN Is this common problem in the County, Dale? Do we see a lot of this without permits being pulled?
- WILTSE Particularly not a building of this type, normally it is visible and most people do not try to do this. It could have been an oversight. One may have thought the other was going to get the permit. The contractor is responsible as he holds a contractors license to call for an inspection. So, their comment was that the guy they hired to do it ought to have it. We do not have a problem with the setback.
- MILLER It is not unusual to have buildings placed in the setback, that happens quite a bit. It is the issue of having no permits at all. As Glenn pointed out if a permit had been pulled there would have been a couple of opportunities where this could have been caught before it actually got this far. If the permit would have been pulled, the site plan would have been reviewed and they would have seen it was too close and could have moved it at that stage. Or if they missed it then the inspector could have caught it.
- It will be very difficult at best to move this building at this point.
- TIDEMANN My concern is that it is an ongoing thing. Is the fine big enough that the contractor will pay attention the next time or is that something that they just slough off.
- WILKSIE We are looking at trying to resolve that issue. We really have not talked to anyone about it but we may try to put provisions in there that licensed companies get the permits. We did have an issue with the same company two and a half years ago. We finally got that resolved.
- TIDEMANN Oversights is a part of our society.

Chad G Hommertzheim approaches the podium

Chad Hommertzheim, 25635 W 37th Street North, Andale, KS. I live right across the street but the pictures do not show my house. One major problem that I have is in twenty years from now when roads are being constructed or widened. I do not know how long it will take to develop this area but when my boys own my place, I hope you do not come over on to my property because he is too close to the street. In this letter, the actual distance from the road is 80 feet but we added an extra distance 65 feet. We were told there would be no issues. In reality, they had poles planted on the south side of the building where it appeared they were going to add and extra beams on to that and it looked like they had intentions to come further south. The poles were gone once they discovered they were too close to the road. They put in their own culvert and the township is responsible for developing the culvert. Township staff went over and talked to him. He has been doing what ever pleases. I am complaining but this guy came from out of town and paid for the land. He calls it agricultural land but you do not pay that much for agricultural land. He has some ulterior motives. Neighbors have tried to talk with him and he is not cooperating and has said ridiculous things to neighbors. He never tried to contact anyone. He has money and feels as if he can do whatever he likes on his property without consulting the county.

- Tidemann Your two concerns. We cannot do anything about his reasons for doing things.
- Hommertzheim I understand that but my main concern is that it will not affect my property across the road. Assuming someday the road will get paved as the development continues there over the next 20 years, will that mean the county will come over on my property if the county opens the road should they widen the road.
- Tidemann Your next point is?
- Hommertzheim I do not believe that he made contact with the County with his plans for compliance.

- Tidemann No, you said something about drainage.
- Hommertzheim He has the poles there on the south side of the building. He had plans on putting an extra link on the south side of the building, he was going to build even closer to the road. My point is he stated he added extra distance so there would be no issues when he knew he had plans to build even closer to the road. My third issue is why isn't he here?
- Tidemann Dale would you mind if we hear some of the other opposition that is here? Is there anyone else here that would like to speak?

Marjie Conyac approaches the podium

- Marjie Conyac 3610 N 263rd West then go south. I think what you asked was about the drainage? When he said that he put his own culvert in. Usually out there the township comes and puts the culvert in. Is the culvert installed adequately to carry the storm water? I think that is what you were asking about.
- Tidemann Not a problem. Any other fixes Marjie?
- Conyac No
- Tidemann Anyone else here to speak?

Dan Hommertzheim 7005 N 183rd West, I have ground south of there. Years on down the road, are they going to take part of my ground since he is too close to the road? There again he never contacted the county. If he had been neighborly he could have come and talked with me because I am out there every evening.

- Tidemann We will hold the response to the three questions that I think is a concern. As for him being neighborly or friendly or whatever is not a matter for us to address like the road and land. I think that now that he is under a watch that he will have to do some things correctly.
- Miller As far as road right away, there is 60 feet of road right away easement in that area which is standard for streets. I do not believe this will impact your property in the future. Unless significant growth patterns changes to cause an impact, it is hard to determine if this as an issue for your property that the government will come along and take your property. I really don't think that will happen in the foreseeable future. As far as the culvert, I cannot speak on whether it is properly sized.
- Wiltse We would require him to get a culvert permit. The culvert permit would allow our survey crew to go out and size the culvert and address the size of it and everything before we proceed with the building of the culvert.
- Tidemann What about the additional pole? Does he have to be under jurisdiction of the building code to actually ask county permission to do anything else?
- Miller He will not be able to put any other structure as close to the road.
- Wiltse He started those and he had the post in when we finally got a hold of him with advisement that he is already too close. If you are going to do something, put it on the backside. He would have to get another permit for that addition. He cannot build it on the front.
- Gruenberger The County cannot change the center of the road. They are not going to move the center of the road to the south because his building is too close.
- Miller I think what he was saying if they need to widen it and if there was not enough room that they have to buy and unequal amount of land on his side in order to make up for the distance on the north side. I do not think that will happen.
- Gruenberger Can they do that?
- Miller Well they can buy the right the right away on either side of the centerline depending on what it takes to make it work. This is so remote and rural until I do not think this will happen.
- Gruenberger The roads will probably be paved in the next ten years.

Tidemann Even if it is paved, I do not think they will move to the south of it because they will pay.

Tidemann Marjie can you step to the mike.

Marjie Conack, 3610 S. 63th N, if this is rezoned, it will be only for this building correct?

Tidemann We are not talking about a zoning change.

Conack It is only for this building right? Anything else built there would still have to make application?

Tidemann Right. Is there anything else that needs to be brought forth on this case?

Gruenberger In the variance, can we write in there that the building will have to be removed if it is in the right of way?

Miller I think it is unlikely that this building is in the right of way.

Tidemann. Even if the road is developed it still will be far enough away to not be a problem. The problem is in the setback and we hope to get the building permit process straightened out from the contractors that are building this way.

Tidemann What is the wish of the board?

Lindsay I do not have a problem with the setback. However, I got a problem with the way this was pushed upon someone. I think this will be an ongoing problem.

Miller I pointed out there was another alternative. He did not want to pursue it.

Gideon Are there only 2 building permits that this contractor did not get authorization for?

Wiltse The culvert is an easy thing.

Gideon Yeah, it is easy but is he going to be penalized?

Wiltse I do not know who did the culvert. Whether he did it himself or it could be whoever built the road.

Tidemann I don't think there is anything we can do about the issue. Glen knows about the problems out there and we are going to try to do things that will make it more essential in the future. I ask that we move forward.

Chad Hommertzheim, 25635 W 37th N, I do not want to be the troublemaker. I really do not want to be the one to decide on having his building torn down. I do not want the problem with my neighbor because I wanted his building torn down.

Tidemann I asked that we motion to move.

Gruenberger I move that the 5 conditions set out in section B6 of the unified zoning code necessary for the granting of the variance are found to exist and the variance be granted as subject to the conditions set out in the secretary's report.

Lindsay Seconded

Motion Carried 4-0

Tidemann Any other business?

Miller No

Tidemann Adjourned 3:59pm